

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:  
WAYNE BAILEY, INC.**

**CASE NO.: 18-00284-5-SWH  
CHAPTER 11**

**DEBTOR.**

**RESPONSE TO WAYNE BAILEY, INC.'S OBJECTION  
TO PACA PROOF OF CLAIM OF  
SOUTHERN ROOTS FARMING COMPANY, LLC**

Southern Roots Farming Company, LLC (“Southern Roots”), by and through its undersigned attorneys, hereby responds to the Objection to its PACA Proof of Claim, No. 79, said objection having been filed by Wayne Bailey, Inc., the Chapter 11 Debtor-in-Possession, on June 6, 2018 [DE 379] (the “Objection”). In response, Southern Roots shows unto the Court as follows:

1. Wayne Bailey, Inc. (“Debtor”) filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code on January 21, 2018 (“Petition Date”).
2. Southern Roots is a creditor, PACA trust fund beneficiary, and party in interest in this bankruptcy case.
3. On March 5, 2018, the Court entered a Consent Order Establishing Exclusive Procedures for the Assertion, Resolution, and Satisfaction of Claims Arising Under the Perishable Agricultural Commodities Act [DE-139] (the “PACA Claims Procedures Order”) setting a “PACA Claims Bar Date” of April 16, 2018, and setting the deadline to object to PACA Proofs of Claim as May 16, 2018. The Court extended the deadline to object to June 6, 2018.
4. On April 13, 2018, Southern Roots timely filed its PACA Proof of Claim, denominated as Claim No. 79. Southern Roots complied with all requirements of the PACA Claims Procedures Order.
5. The Debtor objected to Southern Roots’ PACA Claim on June 6, 2018. Debtor’s position appears to be based on three arguments:
  - a. Southern Roots was not the grower of, and had no actual ownership interest in, the 2017 sweet potato crop out of which the claim arises.

- b. Southern Roots created payment terms beyond that allowable to preserve PACA protection.
- c. Southern Roots failed to properly preserve its PACA rights.

6. In order to be protected as a PACA trust beneficiary, Southern Roots must show that it is an unpaid supplier or seller of produce, or an agent involved in the transaction, and must show:

- a. The produce in question is a “perishable agricultural commodity;”
- b. The commodities must have been received by a commission merchant, a dealer, or broker; and
- c. The claimant must have provided written notice of its intent to preserve its rights under PACA within 30 days after payment came due.

*Bissett Farms v. Bissett Produce, Inc.*, 512 B.R. 528 (Bankr. E.D.N.C. 2014) (citations omitted).

7. Southern Roots has made the *prima facie* showing required to establish that it is a proper PACA trust beneficiary and that it has properly preserved its PACA rights.

8. Southern Roots reserves its right to submit a more complete and detailed memorandum and statement of its legal and factual position prior to the hearing on the PACA Claim and the Objection thereto.

WHEREFORE, Southern Roots prays unto the Court as follows:

- 1. That the PACA Claim of Southern Roots be allowed;
- 2. That the Objection to the PACA Claim of Southern Roots be denied;
- 3. That the Court conduct a hearing on the Objection; and
- 4. For such other and further relief as to the Court seems just and proper.

This the 2<sup>nd</sup> day of July, 2018.

**McCARRON & DIESS**  
Attorney for Southern Roots  
Farming Co., LLC  
707 Walt Whitman Road, Second Floor  
Melville, New York 11747  
Telephone: (631) 425-8110  
gbrown@mccarronlaw.com

By: /s/ Gregory Brown  
Gregory Brown  
NY Bar No. 4366498

**DAVID F. MILLS, P.A.**

Attorney for Southern Roots  
Farming Co., LLC  
1559-B Booker Dairy Rd.  
Smithfield, NC 27577  
Telephone: (919) 934-7235  
Facsimile: (919) 989-1529  
david@mills-law.com

By: /s/ David F. Mills

David F. Mills  
State Bar No: 18326

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:**  
**WAYNE BAILEY, INC.**  
  
**DEBTOR.**

**CASE NO.: 18-00284-5-SWH  
CHAPTER 11**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on this day, copies of the Response to Wayne Bailey, Inc.'s Objection to PACA Proof of Claim of Southern Roots Farming Company, LLC, was served as follows:

**VIA First Class Mail**

Wayne Bailey, Inc.  
P.O. Box 467  
Chadbourn, NC 28431

**VIA CM/ECF**

Gregory B. Crampton  
*Special Counsel for Debtor*

**VIA CM/ECF**

John C. Bircher, III  
*Counsel for UCC*

**VIA CM/ECF**

Trawick H. Stubbs, Jr.  
Laurie Biggs  
*Counsel for Debtor*

**VIA CM/ECF**

Marjorie K. Lynch  
*Bankruptcy Administrator*

I certify under penalty of perjury that the foregoing is true and correct.

DATED: July 2, 2018.

**DAVID F. MILLS, P.A.**

Attorney for Southern Roots Farming Company, LLC  
1559-B Booker Dairy Rd.  
Smithfield, NC 27577  
Telephone: (919) 934-7235  
Facsimile: (919) 989-1529

By: /s/ David F. Mills  
David F. Mills  
State Bar No: 18326